File No. 120909

Committee Item No. 7
Board Item No. _____

# COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

**Committee:** Budget and Finance Committee **Date** 10/03/2012

**Board of Supervisors Meeting** **Date** _____

| Cmte | Board | |
|---|---|---|
| ☐ | ☐ | Motion |
| ☒ | ☐ | Resolution |
| ☐ | ☐ | Ordinance |
| ☐ | ☐ | Legislative Digest |
| ☒ | ☐ | Budget and Legislative Analyst Report |
| ☐ | ☐ | Legislative Analyst Report |
| ☐ | ☐ | Youth Commission Report |
| ☐ | ☐ | Introduction Form (for hearings) |
| ☒ | ☐ | Department/Agency Cover Letter and/or Report |
| ☐ | ☐ | MOU |
| ☐ | ☐ | Grant Information Form |
| ☐ | ☐ | Grant Budget |
| ☐ | ☐ | Subcontract Budget |
| ☒ | ☐ | Contract/Agreement |
| ☐ | ☐ | Form 126 – Ethics Commission |
| ☐ | ☐ | Award Letter |
| ☐ | ☐ | Application |
| ☐ | ☐ | Public Correspondence |

**OTHER** **(Use back side if additional space is needed)**

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| ☐ | ☐ | |
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**Completed by:** Victor Young **Date** September 28, 2012
**Completed by:** Victor Young **Date** _____

[Contract Approval - Complete Coach Works - 80 Neoplan Diesel Buses Rehabilitation - Not to Exceed $19,105,885.60]

**Resolution approving Contract No CPT 631, Neoplan rehabilitation, between the City and County of San Francisco and Complete Coach Works, to rebuild major systems and components on approximately 80 standard Neoplan diesel buses, in an amount not to exceed $19,105,885.60, and for a term not to exceed six years, with expenditures limited to $12 million pending certification of additional funding.**

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) wishes to replace or rehabilitate various systems on approximately 80 40-foot Neoplan buses; and

WHEREAS, The work under Contract No. CPT 631 includes the rebuild or replacement of major systems and components on approximately 80 standard Neoplan diesel buses, which will bring the coaches into a state of good repair, extend their service life for an average of four years; therefore increasing vehicle reliability and availability; and

WHEREAS, The SFMTA issued a Request for Proposals on February 25, 2012 for Contract No. CPT 631: Rehabilitation of Neoplan Buses, and received a single proposal from Complete Coach Works; and

WHEREAS, After performing a price analysis under Federal Transportation Administration contracting guidelines, SFMTA found the proposal to be fair and reasonable; and

WHEREAS, On December 5, 2011, the Civil Service Commission granted approval for this personal services contract under Notice of Action4059 -11/12; and

WHEREAS, Funding for the project will come from Federal Transportation Administration, California State I-Bonds, and AB664 Bridge Toll Funds; however, currently, only $12 million in funding is available for certification; and,

WHEREAS, A copy of Contract No. CPT631 is on file with the Clerk of the Board of Supervisors in File No. 120909, which is hereby declared to be a part of this motion as if set forth fully herein; and

WHEREAS, On September 4, 2012, the SFMTA Board of Directors adopted Resolution No. 12-117, which authorized the Director of Transportation to execute Contract No. CPT631, Neoplan Rehabilitation, with Complete Coach Works., in an amount not to exceed $19,105,885.60, and for a term not to exceed six years, with expenditures limited to $12 million pending certification of additional funding; now, therefore, be it

RESOLVED, That the Board of Supervisors approves Contract No. CPT631, Neoplan Rehabilitation, between the City and County of San Francisco and Complete Coach Works., to rebuild or replace major systems and components on approximately 80 Standard Neoplan diesel buses, in an amount not to exceed $19,105,885.60, and for a term not to exceed six years, with expenditures limited to $12 million pending certification of additional funding.

| Item 7<br>File 12-0909 | Department(s):<br>San Francisco Municipal Transportation Agency |
|---|---|

## EXECUTIVE SUMMARY

### Legislative Objective

Resolution authorizing an agreement between the San Francisco Municipal Transportation Agency (SFMTA) and Complete Coach Works (CCW) to rehabilitate 80 standard (40') Neoplan Buses (a) for an amount not to exceed $19,105,886, (b) with expenditures limited to $12,000,000 pending certification by the Controller of additional available funding, and (c) for a term not exceed six years.

### Key Points

- Currently SFMTA operates a fleet of 206 standard (40') Neoplan Buses, or heavy-duty buses, that are between 10 to 12 years old, approaching or at the minimum retirement age of 12 years, established by the Federal Transit Agency (FTA). SFMTA issued a Request for Proposal (RFP) in February 2012 to select a contractor to rehabilitate 80 of the Neoplan buses, extending the useful life of the buses up to four years. Extending the lives of approximately 80 Neoplan buses, which are over 12 years old, will allow the procurement of new replacement buses to be phased, thereby reducing the average age of the overall fleet and increasing the reliability of the fleet.
- Only one firm, Complete Coach Works (CCW), responded to the RFP. The SFMTA has negotiated an agreement with CCW for up to six years in an amount not-to-exceed $19,105,886. The agreement includes (1) the replacement or overhaul of major systems for the 80 Neoplan buses, (2) interior and exterior body work, (3) a new paint scheme and destination signs, as well as other new installations, and (4) a one-year warranty period.

### Fiscal Impact

- The Capital Budget for the project is $20,690,000. This includes the $19,105,886 for the proposed agreement and $1,584,114 for SFMTA costs including project management, engineering services, maintenance services, and taxes. Funding sources for the project include Federal grants, State bond proceeds, and local bridge toll revenues.
- Available funding for the proposed agreement is $16,589,976, which is $2,515,910 less than the not-to-exceed agreement amount of $19,105,886. According to Mr. Elson Hao, Principal Engineer, SFMTA, $4,100,000 of a pending State bond sale in the fall of 2012 is expected to be directed to the Neoplan Bus Rehabilitation Project, thereby fully funding the proposed agreement as well as the related SFMTA project costs.
- If additional State bond funds are not received, SFMTA will seek local funds from either AB-664 Bridge Toll funds or Proposition K Sales Tax funds to serve as a match for the Federal funds.
- If additional funds do not become available, the project will be scaled back to rehabilitate a smaller number of Neoplan buses.

### Recommendation

- Approve the proposed resolution.

## MANDATE STATEMENT/BACKGROUND

### Mandate Statement

In accordance with Charter Section 9.118, any contract (a) for more than $10,000,000, (b) that extends for longer than ten years, or (c) with an amendment of more than $500,000, is subject to Board of Supervisors approval.

### Background

In 1985, the Federal Transit Agency (FTA) established minimum life requirements for transit buses and vans to ensure that taxpayers received the best return on public investment. The minimum life requirement for a heavy-duty large bus, defined as a bus with a length of 35 to 48 feet and with 27 to 40 seats, was set at 12 years. A 2007 FTA report determined that the average national retirement age for these heavy-duty large buses is 15.1 years. The San Francisco Municipal Transportation Agency (SFMTA) operating fleet consists of 206 standard (40') Neoplan buses. SFMTA reports that the Neoplan buses were delivered between the years of 2000 and 2002 and are 10 to12 years old, and most have reached or are approaching the end of their 12 year service life. Therefore, the SFMTA is expecting to replace these buses. However, according to a September 2012 letter from SFMTA to the Board of Supervisors, at this time, SFMTA is planning the rehabilitate approximately 80 of 206 Neoplan buses, which have been operating for over 12 years, to improve their reliability and extend their service life for an average of four years.Ex tending the lives of approximately 80 Neoplan buses will allow the procurement of new replacement buses to be phased, thereby reducing the average age of the overall fleet and increasing the reliability of the fleet.

In February 2012, the SFMTA conducted a competitive Request for Proposals (RFP) process for the rehabilitation of approximately 80 Neoplan buses, and received a single proposal from Complete Coach Works (CCW) with an offer of $19,041,086.[1] SFMTA reports that during negotiations with CCW, the Maintenance and Operations Divisions requested upgrades and changes to the suspension system, the digital sign system and automatic voice announcement system, which resulted in a price increase of $64,800 to CCW's original proposal, for a final contract amount of $19,105,886.

In order to comply with FTA Circular C 4220.1F for a federally funded project awarded to a single bidder, SFMTA requested Jacobs Engineering to perform a procurement and contract review and analysis to determine if the circumstances surrounding the procurement process allowed for full and open competition and if so whether or not the costs are reasonable. The Jacobs Engineering review concluded that the procurement process allowed for adequate competition within a reasonable amount of time and that the CCW bid did provide a fair market price in their scope of work proposal.

[1]San Francisco Municipal Transportation Agency (SFMTA) staff documents report that nine companies attended a pre-bid conference.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize an agreement between the San Francisco Municipal Transportation Agency (SFMTA) and Complete Coach Works (CCW) to rehabilitate 80 standard (40') Neoplan buses (a) for an amount not to exceed $19,105,886, (b) with expenditures limited to $12,000,000 pending certification of additional available funding, and (c) for a term not exceed six years.

According the SFMTA, the rehabilitation of the 80 Neoplan buses would include the replacement or overhaul of major systems including engines, transmissions, radiators, brakes, and suspension system; as well as, interior and exterior body work, a new paint scheme, destination signs, and overhaul of the air supply systems, fuel tank, batteries, and fluid lines. The proposed agreement also includes installation of Contact-Less Acoustic Sensing System (CLASS) type doors, new ClearAire system filters, new fan blowers, new Absorb Glass Mat (AGM) type batteries, new door bearings and sleeves, new flexible hoses and lines, refurbishment of the battery compartment, reinforcement of the window posts and a deep cleaning of the old exhaust filters. Under the proposed agreement, CCW will provide all sub-contracted repairs, warranties, labor, inspections, engineering, tools, materials, parts, facilities and equipment required to complete this work, including pick-up and delivery of the coaches and all testing prior to delivery and acceptance of the vehicles. The proposed agreement also includes the requirement that all rehabilitation work to be performed off-site by CCW and a one-year warranty period.

The SFMTA reports that bus service will not be impacted during the rehabilitation period since the number of buses that will be undergoing rehabilitation at the contractor's facility will vary between four and eight buses at a time dependent on the impact on bus service. Under the proposed agreement, the rehabilitation period for each bus will vary between four and six weeks, depending on the amount of unforeseen work and the extent of body work required. Therefore, SFMTA expects that it may take between two and three years to complete the rehabilitation of 80 buses.

The agreement requires that all of the subject 80 buses be delivered to the SFMTA by no later than six years following the effective date of the Controller's certification.

## FISCAL IMPACTS

Under the proposed resolution, SFMTA would enter into an agreement with CCW, for up to six years, for an amount not to exceed $19,105,886, as shown in Table 1 below.

**Table 1: Use of Funds for the Neoplan Bus Rehabilitation in the Proposed Agreement**

| *Description of Service* | *Cost* |
|---|---|
| Rehabilitation of Neoplan Coaches | $ 17,905,886 |
| Exterior Body Work | 700,000 |
| Unforeseeable Work (2.6%) | 500,000 |
| **Agreement Not-to-Exceed Total** | **$19,105,886** |

The Capital Budget for the project is $20,690,000. This includes the $19,105,886 for the proposed agreement and $1,584,114 for related SFMTA costs, including project management, engineering services, maintenance services, and taxes.

Available funding for the proposed agreement is $16,589,976 (as shown in Table 2 below), which is $2,515,910 less than the $19,105,886 agreement amount. According to Mr. Elson Hao, Principal Engineer, SFMTA, $4,100,000 for the next State I-Bond[2] sale in the fall of 2012 is expected to be directed to the Neoplan Bus Rehabilitation Project, thereby fully funding the proposed agreement amount of $19,105,886 plus estimated SFMTA related project costs of $1,584,114, resulting in total estimated project costs of $20,690,000.[3]

**Table 2: Source of Available Funds for the Neoplan Bus Rehabilitation In the Proposed Agreement**

| *Source of Funds (received by SFMTA to date)* | *Amount* |
|---|---|
| Federal Funding | |
| Urbanized Area Formula Program | $ 14,631,981 |
| State Funding | |
| I-Bond | 700,000 |
| Local Funding | |
| AB-664 Bridge Toll Funds | 1,257,995 |
| **Total Available Funding as of the Writing of this Report** | **$16,589,976** |

According to the proposed resolution, proposed agreement expenditures are limited to $12,000,000, pending Controller certification of the receipt of the pending $4,100,000 in State I-Bond proceeds.[4]

[2] Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 created the Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA); PTMISEA funds, or I-Bond funds, may be used for transit rehabilitation, safety or modernization improvements, capital service enhancements or expansions, new capital projects, bus rapid transit improvements, or rolling stock (buses and rail cars) procurement, rehabilitation or replacement.

[3] Identified available funding of $20,689,976 ($16,589,976 plus the pending State funds of $4,100,000) is $24 less than the estimated project cost of $20,690,000.

[4] The $4.1 million in State I-Bond funds will serve as a match to $4.8 million of the $14.6 million in federal Urbanized Area Formula Program funds.

The September 2012 letter from SFMTA to the Board of Supervisors states that in the event that these State bond funds of $4,100,000 are not received, SFMTA will seek local funds from either AB-664 Bridge Toll funds or from the Proposition K Sales Tax[5] monies to serve as a match for the Federal funds. The September 2012 letter from SFMTA to the Board of Supervisors states if additional funds do not become available, the project will be scaled back to rehabilitate a smaller number of Neoplan buses. Mr. T.J. Langsang, Fleet Engineering, SFMTA reports that 42-43 Neoplan buses could be rehabilitated with the presently limited expenditures of $12,000,000.

## RECOMMENDATION

Approve the proposed resolution.

[5] Proposition K was approved by San Francisco voters in November 2003, allowing the half-cent transportation Sales Tax to be allocated to the Prop K Transportation Expenditure Plan to finance transportation improvements for the City and County of San Francisco. The Expenditure Plan does not provide guidance as to the allocation of those revenues over the 30-year period, but instead only stipulates eligible programs.

Edwin M. Lee | Mayor

Tom Nolan | Chairman
Cheryl Brinkman | Vice-Chairman
Leona Bridges | Director
Malcolm Heinicke | Director
Jerry Lee | Director
Joél Ramos | Director

Edward D. Reiskin | Director of Transportation

September 4, 2012

Honorable Board of Supervisors
City and County of San Francisco
1 Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

*Subject: Authorizing The San Francisco Municipal Transportation Agency (SFMTA) to Enter in an Agreement with Complete Coach Works for the Rehabilitation of 80-40' Neoplan buses*

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors authorize the SFMTA to enter into an agreement with Complete Coach Works (CCW) for the rehabilitation of 80 Neoplan buses, for an amount not to exceed $19,105,885.60 and for a term not to exceed six years, with expenditures limited to $12 million pending certification of additional funding.

The purpose of this project is to rebuild or replace major systems and components on approximately 80 standard Neoplan diesel buses. Rebuilding these buses will extend their service life by an average of four years and improve the service reliability of the Neoplan diesel fleet.

**Background**

The SFMTA operates a fleet of 206 standard (40') and 124 articulated (60') Neoplan buses delivered between the years 1999 and 2000. Most have reached the end of their service life of 12 years.

Under the proposed contract, CCW will rehabilitate approximately 80 standard Neoplan buses. Rehabilitating these buses will improve their reliability and extend their service life for an average of four years. Extending the life of some of the buses will also allow the SFMTA to stagger its procurement of new buses thereby reducing the average age of the overall fleet and further increasing the reliability of the fleet because most of the buses will be relatively new.

**Description of Work**

The rehabilitation work includes the replacement or overhaul of major systems such as engines, transmissions, radiators, brakes, and the suspension system. In addition, the contractor will perform interior and exterior body work, provide a new paint scheme, and repair or replace destination signs, air supply systems, the fuel tanks, batteries and fluid lines.



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The contractor will perform all rehabilitation work off-site, and shall comply with all applicable federal, state and local laws and regulations. It is the full responsibility of the Contractor to dispose of all removed equipment in a safe and legal manner.

The rehabilitation work should not impact service since the contractor will only be working on four to eight buses at a time. The actual quantity will depend on how many buses Maintenance can release and still meet service demands. The main criteria for releasing buses to the contractor will be the impact on service.

The rehabilitation period for each bus will vary between six and eight weeks, depending on the amount of unforeseen work and the extent of body work required on each bus. It may, therefore, take three to five years to complete the rehabilitation of all 80 buses. In addition, the Contractor will warrant the work on each bus for one year.

**Procurement History**

On December 5, 2011, the Civil Service Commission granted approval for this contract under Notice of Action 4059-11/12.

On February 21, 2012, the SFMTA Board of Directors authorized the Director of Transportation to issue a Request for Proposals (RFP) for Contract No. CPT 631: Rehabilitation of Neoplan Buses.

On February 23, 2012, the SFMTA issued the RFP for CPT 631 Rehabilitation of Neoplan Buses to perform system replacement and rehabilitation for up to 80 standard (40') Neoplan high floor clean diesel coaches.

On March 30, 2012, the SFMTA received one proposal from CCW in the amount of $19,041,086. During negotiations with CCW, the Maintenance and Operations sections requested upgrades and changes to the suspension system, the digital sign system and automatic voice announcement system. These changes resulted in a price increase of $64,799.60 to CCW's original proposal, for a final contract amount of $19,105,885.60.

Staff has performed a price analysis and found that the proposal is comparable with recent projects of similar work scope.

The SFMTA Contract Compliance Office has confirmed that CCW's commitment to meet the 10 percent SBE participation goal for this contract.

**Alternatives Considered**

The alternative considered was for SFMTA to repair or replace these systems as they fail during service, but that would impact vehicle availability and reliability. In addition, the unscheduled maintenance and labor costs would also impact Muni's operating budget.

**Funding Impact**

Funding for this project is provided by the Federal Transit Administration, and by California I-Bond and AB 664 Bridge Toll funds.

The contract is for $19,105,885.60, of which $12 million is already in hand from federal and local matching funds. SFMTA anticipates receiving another $4.8 million in Federal funding to arrive by late summer of 2012. Additionally, approximately $2.7 million in I-Bond funds will be prioritized for use on this project along with eligible federal dollars made available through savings from carry forward projects. In the event these funds are not received, SFMTA will seek local funds from either AB-664 or Prop K to serve as match for the anticipated federal funds. If additional funds do not become available, then the project will be scaled back to rehabilitate a smaller number of vehicles.

**SFMTA Board Action**

On September 4, 2012 the SFMTA Board of Directors adopted Resolution No. 12-117, which authorized the Director of Transportation to execute Contract No. CPT631: Rehabilitation of Neoplan Buses, with CCW in an amount not to exceed $19,105,885.60 and for a term not to exceed six years, with expenditures limited to $12 million pending certification of additional funding.

**Recommendation**

The SFMTA requests that the San Francisco Board of Supervisors approve the Agreement with Complete Coach Works in an amount not to exceed $19,105,885.60 and for a term not to exceed six years, with expenditures limited to $12 million pending certification of additional funding.

Thank you for your consideration of this proposed agreement. Should you have any questions or require more information, please do hesitate to contact me any time.

**Sincerely,**

**Edward D. Reiskin**
**Director of Transportation**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 12-117

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) wishes to replace or rehabilitate various systems on approximately 80 - 40' Neoplan buses; and,

WHEREAS, This contract will bring the coaches into a state of good repair, extend their service life for an average of four years, therefore increasing vehicle reliability and availability; and,

WHEREAS, The SFMTA issued a Request for Proposals on February 25, 2012, for Contract No. CPT 631: Rehabilitation of Neoplan Buses, and received a single proposal from Complete Coach Works, 1863 Service Court, Riverside, CA 92507; and,

WHEREAS, The Contract Compliance Office has confirmed Complete Coach Works' commitment to meet the 10% SBE participation goal for this contract; and,

WHEREAS, The Civil Service Commission approved this contract under Notice of Action 4059-11/12 on December 5, 2011; and,

WHEREAS, Staff has performed a cost/price analysis and found that the proposal is comparable with recent projects of similar work scope; and,

WHEREAS, The funding for this project comes from the Federal Transit Administration, and California I-Bond and AB 664 Bridge Toll funds; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. CPT 631: Rehabilitation of Neoplan Buses, with Complete Coach Works in an amount not to exceed $19,105,885.60, and for a term not to exceed six years.

---

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of September 4, 2012.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**Agreement Between**

**The City And County Of San Francisco**

**San Francisco Municipal Transportation Agency**

**And**

**Complete Coach Works**

**For**

**Rehabilitation of Neoplan Buses**

**Contract No. CPT 631**
**CCO NO. 11-1187**

## TABLE OF CONTENTS


**Page**

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation ..... 3
2. Term of the Agreement ..... 3
3. Effective Date of Agreement ..... 3
4. Services Contractor Agrees to Perform ..... 4
5. Compensation ..... 4
6. Guaranteed Maximum Costs ..... 4
7. Payment; Invoice Format ..... 4
8. Submitting False Claims; Monetary Penalties ..... 5
9. Disallowance ..... 5
10. Taxes ..... 5
11. Payment Does Not Imply Acceptance of Work ..... 6
12. Qualified Personnel ..... 6
13. Responsibility for Equipment ..... 6
14. Independent Contractor; Payment of Taxes and Other Expenses ..... 6
    - 14.1. Independent Contractor ..... 6
    - 14.2. Payment of Taxes and Other Expenses ..... 7
15. Insurance; Bonds ..... 7
    - 15.1. Insurance ..... 7
    - 15.2. Bonds ..... 9
16. Indemnification ..... 10
17. Incidental and Consequential Damages ..... 11
18. Liability of City ..... 11
19. Liquidated Damages ..... 11
20. Default; Remedies ..... 11
    - 20.1. Event of Default ..... 11
    - 20.2. Remedies ..... 12
21. Termination for Convenience ..... 12
    - 21.1. Exercise of Option ..... 12
    - 21.2. Contractor Actions ..... 12

21.3. Contractor Invoice ..... 13
21.4. Non-Recoverable Costs ..... 13
21.5. Deductions ..... 13
21.6. Survival ..... 14
22. Rights and Duties Upon Termination or Expiration ..... 14
22.1. Survival of Sections ..... 14
22.2. Contractor Duties ..... 14
23. Conflict of Interest ..... 14
24. Proprietary or Confidential Information of City ..... 14
25. Notices to the Parties ..... 14
26. Ownership of Results ..... 15
27. Works for Hire ..... 15
28. Audits and Inspection of Records ..... 15
29. Subcontracting ..... 15
30. Assignment ..... 16
31. Non-Waiver of Rights ..... 16
32. Reserved ..... 16
33. Claims ..... 16
34. Nondiscrimination; Penalties ..... 16
34.1. Contractor Shall Not Discriminate ..... 16
34.2. Subcontracts ..... 17
34.3. Nondiscrimination in Benefits ..... 17
34.4. Condition to Contract ..... 17
34.5. Incorporation of Administrative Code Provisions by Reference ..... 17
35. MacBride Principles—Northern Ireland ..... 17
36. Tropical Hardwoods and Virgin Redwood Ban ..... 17
37. Drug-Free Workplace Policy ..... 18
38. Resource Conservation ..... 18
39. Compliance with Americans with Disabilities Act ..... 18
40. Sunshine Ordinance ..... 18
41. Public Access to Meetings and Records ..... 18
42. Notification of Limitations on Contributions ..... 18
43. Requiring Minimum Compensation for Covered Employees ..... 19

44. Health Benefits for Covered Employees ..... 20
45. Employment Training Program ..... 22
46. Prohibition on Political Activity with City Funds ..... 22
47. Preservative-treated Wood Containing Arsenic ..... 22
48. Modification of Agreement ..... 22
48.1. Modification in Writing ..... 23
48.2. Extra Work ..... 23
49. Authority of Engineer ..... 23
50. Agreement Made in California; Venue ..... 23
51. Construction ..... 23
52. Entire Agreement ..... 23
53. Compliance with Laws ..... 24
54. Services Provided by Attorneys ..... 24
55. Disputes ..... 24
55.1. Notice of Dispute ..... 24
55.2. Resolution of Disputes ..... 24
55.3. No Cessation of Work ..... 24
55.4. Alternative Dispute Resolution ..... 24
55.5. Claims for Additional Compensation ..... 24
55.6. Disputes among Consultant Partners ..... 25
56. Severability ..... 25
57. Protection of Private Information ..... 25
58. Graffiti Removal ..... 25
59. Food Service Waste Reduction Requirements ..... 26
60. Time of Essence ..... 26
61. Technical Specifications ..... 26
61.1. Fabrication ..... 26
61.2. Omission ..... 26
61.3. Priority ..... 26
61.4. Design Review ..... 27
61.5. Preliminary Drawings ..... 27
61.6. Materials/Accessories Responsibility ..... 27
62. Project Planning, Scheduling and Control ..... 27

62.1. Introduction ..... 27
62.2. Scheduling Terms ..... 27
62.3. Descriptions of Submittals ..... 28
62.4. Modifications to the Schedule ..... 28
63. Assumption of Risk of Loss ..... 28
64. FTA Requirements ..... 28
65. Cooperative Drafting ..... 28
66. Unavoidable Delays ..... 29
66.1. Definition ..... 29
66.2. Notification of Delay ..... 29
66.3. Request for Extension ..... 29

**City and County of San Francisco**
**San Francisco Municipal Transportation Agency**
**One South Van Ness 7th Floor**
**San Francisco, California 94103**

## Agreement between the City and County of San Francisco and

## Complete Coach Works

This Agreement is made this _____ day of _____, 2012, in the City and County of San Francisco, State of California, by and between: Complete Coach Works, 1863 Service Court, Riverside, CA 92507 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its San Francisco Municipal Transportation Agency ("SFMTA").

### Recitals

**A.** SFMTA wishes to obtain the services of a qualified firm to perform system replacement and rehabilitation for up to 80 standard (40') Neoplan high floor diesel coaches in its fleet.

**B.** A. Request for Proposals ("RFP") was issued on February 25, 2012, and City selected Contractor as the highest-qualified scorer pursuant to the RFP.

**C.** Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.

**D.** Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4059-11/12 on December 5, 2011.

Now, THEREFORE, the parties agree as follows:

### Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of the Conformed Contract Documents, it shall have the meaning set forth herein.

Acceptance: The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.

Award: Notification from the City to Contractor of acceptance of Contractor's proposal, subject to the execution and approval of a satisfactory Contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

Coaches: SFMTA Neoplan diesel motor coaches, also referred to as "buses" and "vehicles."

Certification: Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.

City: City and County of San Francisco, a municipal corporation.

Conformed Contract Documents: The Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

Contract (Agreement): The written Contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, Contractor's Proposal, the Contract bonds or other security, and all supplemental agreements.

Contract Modification: A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Contractor: The proposer to whom award is made.

Controller: Controller of the City.

Days: Unless otherwise designated, the word "days" refers to working days of the City.

Engineer: The SFMTA Engineer assigned to the Contract or designated agent.

Exterior Body Work: Repair of miscellaneous damage to the exterior of the Coaches. See Section 2.1.1 of the Technical Specifications.

Final Acceptance: The formal written acceptance by the Director of Transportation that all contract deliverables for the Contract have been satisfactorily completed and accepted. This will authorize the Project Manager to release the final payment, including all retention, to the Contractor.

Muni: The San Francisco Municipal Railway, the public transit system of the City under the supervision and control of the San Francisco Municipal Transportation Agency.

Notice To Proceed: A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the contract.

Project Manager: The Project Manager assigned to the Contract for the SFMTA of the City, or designated agent.

Proposal: The technical and management information and prices submitted by Contractor in response to the Request for Proposals.

Request for Proposals; RFP: The Request for Proposals issued by the SFMTA on (Date), for component life cycle rehabilitation for up to 100 Coaches.

SFMTA: The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway and the Division of Sustainable Streets (Parking and Traffic).

Subcontractor: Any individual, partnership, firm, or corporation, which undertakes integrally on the Project the partial or total design, manufacture, or performance of one or more items of work under the terms of the contract. As used herein, the terms subcontractor and supplier are synonymous.

Technical Specifications: The portion of the Conformed Contract Documents that contain the specifications, provisions, and requirements that detail the work and the materials, products (including the methods of manufacture, construction, assembly, and testing), and other requirements relative thereto.

Unforeseeable Work: Latent conditions in the Coach (not including Exterior Body Work) that are not included in the Scope of Work as identified in the Technical Provisions but that are generally recognized as inherent in work of the character provided for under this Contract.

Work: The furnishing of all labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion thereof.

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement** Subject to Section 1, the term of this Agreement shall not exceed six years from the Effective Date.

**3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in the "Technical Specifications," and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit B.

**5. Compensation**

In no event shall the amount of this Agreement exceed Nineteen Million, One Hundred Five Thousand, Eight Hundred Eighty Five Dollars and Sixty Cents ($19,105,885.60) The breakdown of costs associated with this Agreement appears in the Price Schedule (Exhibit C) and Payment Schedule (Exhibit D), incorporated by reference as though fully set forth herein. Compensation for Unforeseeable Work and Exterior Body Work shall be negotiated as a lump sum or, if the parties are unable to agree on an amount, on a force account basis with a maximum not-to-exceed amount, according to the provisions of Exhibit E.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

**6. Guaranteed Maximum Costs**

**6.1.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

**6.2.** Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

**6.3.** Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

**6.4.** The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**7. Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment

Authorization number. All amounts paid by City to Contractor shall be subject to audit by City.

Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties." Progress payments shall be made as set forth in the Payment Schedule (Exhibit D). Payment for Unforeseeable Work and Exterior Body Work shall be made in conjunction with payments for Items 1b or 2b, depending on the Coach(es) for which Contractor is performing the Unforeseeable Work or the Exterior Body Work.

**8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Disallowance**

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

**10. Taxes**

**10.1.** Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

**10.2.** Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**(a)** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

**(b)** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**(c)** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**(d)** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**13. Responsibility for Equipment**

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

**14. Independent Contractor; Payment of Taxes and Other Expenses**

**14.1. Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly

responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**14.2. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 15. Insurance; Bonds

### 15.1. Insurance

**(a)** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage's:

**(i)** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, illness or injury. The

Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors; and

**(ii)** Commercial General Liability Insurance with limits not less than $2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

**(iii)** Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

**(iv)** Garage Liability insurance, including coverage for garage operations arising from premises/operations, product/completed operations, contracts, owned vehicles, non-owned vehicles and damage to vehicles owned by others (bailment): Minimum limit of liability of $2,000,000 each occurrence combined single limit bodily injury and property damage; and

**(v)** Garage keepers' legal liability insurance, comprehensive form, with limits not less than $2,000,000 each occurrence.

**(vi)** The shipping contractor shall carry, at a minimum, physical damage insurance (including destruction, damage, fire and theft) in the amount of not less than $1,000,000 and commercial liability insurance in the amount of not less than $1,000,000.

**(b)** Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability and Shippers Coverage policies must provide the following:

**(i)** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**(ii)** That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**(c)** Waiver of Subrogation – Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

**(d)** All policies (and bonds, as described in Section 15.2 below) shall provide 30 days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency
700 Pennsylvania Avenue, Building B, Room B209
San Francisco, CA 94107
Attn: Mr. Elson Hao
Contract No. CPT 631

**(e)** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this

Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**(f)** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

**(g)** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

**(h)** Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

**(i)** Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

**(j)** If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

**15.2. Bonds**

**(a)** Within 20 days following the receipt of a notice of recommended award of contract and until completion of all Contract obligations and acceptance by City of the final coach, the Contractor shall furnish to City a performance and a labor and materials bond in an amount not less than $250,000 to guarantee Contractor 's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Coach is accepted, and to guarantee Contractor 's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection (b) below.

**(b)** From acceptance by City of the last coach, and throughout the warranty period of the last Coach accepted, Contractor shall supply a maintenance or warranty bond or irrevocable letter of credit in the amount of $250,000 to guarantee Contractor's warranty of performance of all the Coaches with unexpired warranties at the time of issuance of the warranty bond.

**(c)** Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities or letter of credit must be satisfactory to SFMTA and to the Controller and Risk Manager of the City and County of San Francisco.

**(d)** During the period covered by the Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of SFMTA, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within thirty (30) days after notice given by SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such thirty (30) day period to substitute another and sufficient surety, Contractor, if SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

**16. Indemnification**

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

## 17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

## 18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## 19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines provided in the Project Delivery Schedule (Exhibit B), unless extended due to Unavoidable Delays as defined in Section 66, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by SFMTA.

Failure to deliver the coaches by the times stated in Exhibit B $500 per vehicle per day

Failure to deliver all other Project deliverables $500 per day per deliverable (spare parts, training, drawings, reports, documents)

## 20. Default; Remedies

**20.1. Event of Default.** Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

**(a)** Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57 or 58.

**(b)** Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

**(c)** Contractor (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (v) takes action for the purpose of any of the foregoing.

**(d)** A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**20.2. Remedies**. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## 21. Termination for Convenience

**21.1. Exercise of Option**. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

**21.2. Contractor Actions**. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

**(a)** Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

**(b)** Not placing any further orders or subcontracts for materials, services, equipment or other items.

**(c)** Terminating all existing orders and subcontracts.

**(d)** At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**(e)** Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

**(f)** Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

**(g)** Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

**21.3. Contractor Invoice.** Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

**(a)** The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

**(b)** A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

**(c)** The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

**(d)** A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

**21.4. Non-Recoverable Costs.** In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 21.3.

**21.5. Deductions.** In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for work or other services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or

expenses excluded pursuant to the immediately preceding subsection (21.4); and (d) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

**21.6. Survival.** City's payment obligation under this Section shall survive termination of this Agreement.

**22. Rights and Duties Upon Termination or Expiration**

**22.1. Survival of Sections.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

**22.2. Contractor Duties.** Subject to the immediately preceding subsection 22.1, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

**23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify the City.

**24. Proprietary or Confidential Information of City**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information, which may be owned or controlled by City, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City: San Francisco Municipal Transportation Agency
700 Pennsylvania Avenue, Building B, Room B209

San Francisco, CA 94107
Attn: TJ Lansang
TJ.Lansang@sfmta.com
Phone: (415) 401-3137
Fax: (415) 401-3218

To Contractor: Complete Coach Works
1863 Service Court
Riverside, CA 92507
Attn: Macy Neshati, Vice President
macy@completrechaco.com
Phone: (951) 684-9585
Fax: (951) 684-2023

Any notice of default must be sent by registered mail.

**26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**28. Audits and Inspection of Records**

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

**31. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**32. Reserved**

**33. Claims**

Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the Engineer, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Engineer due written notice of potential claim.

The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Engineer prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

**34. Nondiscrimination; Penalties**

**34.1. Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or

perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**34.2. Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from SFMTA) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**34.3. Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**34.4. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**34.5. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

## 35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

## 36. Tropical Hardwoods and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for

any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**38. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

**42. Notification of Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**43. Requiring Minimum Compensation for Covered Employees**

**43.1.** Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

**43.2.** The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

**43.3.** Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be reputably presumed to be retaliation prohibited by the MCO.

**43.4.** Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

**43.5.** The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor.

**43.6.** Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

**43.7.** Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

**43.8.** Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

**43.9.** If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

**44. Health Benefits for Covered Employees**

**44.1.** Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

**44.2.** For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

**44.3.** Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

**44.4.** Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

**44.5.** Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

**44.6.** Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

**44.7.** Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

**44.8.** Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

**44.9.** Contractor shall keep itself informed of the current requirements of the HCAO.

**44.10.** Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

**44.11.** Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

**44.12.** Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

**44.13.** City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

**44.14.** If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

**45. Employment Training Program**

In furtherance of its existing company policy to promote job training for disadvantaged individuals, Contractor agrees to undertake an employment training program to provide disadvantaged individuals with the skills necessary to work at various trades in the production department of Contractor's firm. At a minimum, Contractor agrees to recruit disadvantaged individuals through various organizations and supply all necessary training at its expense for the following positions:

3 individuals for careers as welders

2 individuals for careers as electronics and electrical technicians

2 individuals for careers as general mechanics

**46. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years.

**47. Preservative-treated Wood Containing Arsenic**

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**48. Modification of Agreement**

**48.1. Modification in Writing.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law. Contractor shall cooperate with the SFMTA to submit to the Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

**48.2. Extra Work.** The City may order changes in the work under this Agreement and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall promptly comply with such orders, except that:

**(a)** If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost, or the time required to execute the change in scope of work, the City shall make a reasonable and proper adjustment in the contract price, delivery schedule, or both as agreed upon by the Contractor and the City as the reasonable and proper allowance for the increase or decrease required.

**(b)** No order for any alteration, modification, or extra that will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Project Manager. No oral statement of any person whosoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

**49. Authority of Engineer**

The Engineer shall decide all questions, which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Engineer shall at all times act fairly and reasonably. Any appeal of the Engineer's decisions shall be in accordance with the provisions of Section 56 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Engineer, who, with input from SFMTA staff and from the Contractor, shall decide the true meaning and intent of the Contract. The Engineer's decision in this regard shall be administratively final and conclusive.

**50. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**51. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**52. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

**53. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**54. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**55. Disputes**

**55.1. Notice of Dispute**. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (ai) a statement of the party's position and a summary of the arguments supporting that position, and (bii) any evidence supporting the party's position.

**55.2. Resolution of Disputes.** Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Liaison and Consultant's shall be decided in writing by the SFMTA Deputy Director for Fleet Services and Constructibility. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Contract Consultant mails or otherwise furnishes a written appeal to the Director of Capital Programs and Construction, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Capital Programs and Construction shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Engineer's decision as to a particular dispute is final.

**55.3. No Cessation of Work**. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Engineer.

**55.4. Alternative Dispute Resolution**. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

**55.5. Claims for Additional Compensation**. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Contractor or its sub-contractors stop work due to an unresolved dispute.

**55.6. Disputes among Contractors Partners**. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within thirty (30) calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Contractor's Joint Venture or Association firms until the dispute is resolved.

**56. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**57. Protection of Private Information**

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**58. Graffiti Removal**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners,

billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**60. Time of Essence**

Time is of the essence in this Agreement.

**61. Technical Specifications**

**61.1. Fabrication**. The Coaches shall be rehabilitated and guaranteed in accordance with the "Technical Specifications."

**61.2. Omission**. Notwithstanding the Technical Specifications or other data provided by the Engineer, the Contractor shall have the responsibility of supplying all parts and details required to make these Coaches complete and ready for service even though such details may not be specifically mentioned in the Specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this Contract or should have been installed by the Contractor. If additional repairs are needed to make any Coaches complete and ready for service beyond what is in the Specifications, these repairs will be handled by change orders through a Contract Modification, as approved by the SFMTA and the SFMTA Board, as required.

**61.3. Priority**. In the event of any deviation between the description of these Coaches or the description of the Work in the Technical Specifications and in this document or the Contractor's Proposal, the Technical Specifications shall govern.

**61.4. Design Review.** Prior to commencement of Coach rehabilitation, the Contractor and the Engineer shall agree to the specific details of the rehabilitation. These details may include, but not be limited to, items such as: engineering and design details, test plans and procedures, appropriate training, sub-suppliers equipment, colors, wording, and placement of numbers and signs. In cases where consensus cannot be reached, the opinion of the Engineer as to design details shall be administratively final unless clearly arbitrary or capricious. Disputes regarding cost and other matters shall be subject to the provisions of Sections 33 and 55. When plans, drawings, requests for information, procedures or other contract deliverables are submitted to SFMTA for approval and/or comments, the Contractor shall delineate any deviations from the Technical Specifications in such deliverables. SFMTA shall approve, disapprove and/or comment on such deliverables within 30 days after receipt. However, no extension of time will be allowed for review of submittals that have been disapproved. Such disapproved submittals shall be resubmitted and will be reviewed and returned within 30 days after subsequent receipt. Neither review nor approval of any plans, drawings, procedures, other contract deliverables or the materials supplied under this contract shall in any way relieve the Contractor of its obligations to perform work under the provision of this Contract.

**61.5. Preliminary Drawings.** Preliminary drawings shall provide enough detail to conduct preliminary engineering evaluations of structural, electrical, mechanical, and other subsystems. Drawings shall show the general arrangement of equipment layout and subsystems and such detail as is necessary to give a comprehensive idea of the product contemplated.

**61.6. Materials/Accessories Responsibility.** The Contractor shall be responsible for all materials and workmanship in the rehabilitation of the Coaches and all components used, whether the same are manufactured by the Contractor or purchased from a Subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the rehabilitation of the vehicle.

## 62. Project Planning, Scheduling and Control

**62.1. Introduction.** This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract work. Critical Path Method scheduling (CPM) shall be employed by the Contractor for planning, scheduling and reporting all work required by the Contract Documents.

**62.2. Scheduling Terms.**

**(a)** Baseline Schedule: The detailed schedule, in bar-chart format, prepared by the Contractor, indicating the Contractor's plan for executing the Contract work. The Baseline Schedule shall be developed using Microsoft Project Software or approved equal. The Baseline Schedule shall be revised as necessary to incorporate approved Contract modifications. The Contractor's performance or other avoidable delays shall not be considered justification for Baseline Schedule revision.

**(b)** Current Schedule: The updated logic network and supporting reports indicating actual progress to date and forecasted logic and progress for the remaining work. The update will be, at a minimum, to the same level of detail as the Baseline Schedule.

**(c)** Supplemental Schedule(s): Detailed schedules prepared by the Contractor, at the request of the Engineer, to substantiate proposed Contractor changes that may have a schedule impact.

**(d)** Monthly Plan and Reports: A detailed plan of the work, in bar-chart format, to be accomplished in the coming weeks. Contractor shall provide SFMTA with daily project and production status and schedule reports by E-mail. Contractor shall also provide monthly and quarterly schedule reports in Microsoft Project and Power Point, or SFMTA-approved equivalents, and per SFMTA Engineer requirements for reporting to funding agencies..

**62.3. Descriptions of Submittals**

**(a) Baseline Schedule**: The schedule documents, reports, lists, computer software with documentation and computer diskettes and E-mail files are required with each submittal. The Baseline Schedule shall be submitted within 30 days from NTP or by the first design review meeting, whichever comes first.

**(b) Management Work Plan**: Contractor shall submit a Management Work Plan within thirty (30) days after NTP. The Management Work Plan shall include protocols, procedures, and assignments of responsibility for key personnel and correspondence forms for all phases of the contract and all project activities for the duration of the contract. Once the Management Work Plan is approved, key personnel shall not be substituted without approval from the SFMTA. If the Contractor plans to substitute key personnel, a 30-day advance notice, and qualification of new personnel shall be required. At the request of the SFMTA, or when approved changes are made, the Contractor's Management Work Plan shall be updated to include the latest revision to the project scope or other changes in project circumstances.

**62.4. Modifications to the Schedule**. When requested by the Engineer, the Contractor shall submit Supplemental Schedules to the Engineer to substantiate proposed Contract changes that may have an impact on the schedule. Contractor shall submit such schedules to the Engineer for review and approval within three (3) working days from the request; otherwise, any proposed Contract change will not be considered by the City. On approval of a Contract modification by the City, the approved change will be incorporated in the Baseline Schedule during the monthly update process.

**63. Assumption of Risk of Loss**

Prior to acceptance of the rehabilitated Coaches, the Contractor shall bear risk of loss of the Coaches, including any damage sustained during transportation to the delivery site or during acceptance testing. The City shall assume risk of loss of the Coaches only after acceptance.

**64. FTA Requirements**

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Exhibit A, are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

**65. Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no

presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

## 66. Unavoidable Delays

**66.1. Definition**. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

**66.2. Notification of Delay**. The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five calendar days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

**66.3. Request for Extension**. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for extension due to Unavoidable Delays. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing. The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

San Francisco Municipal Transportation Agency

_____

Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No._____

Dated:_____

Attest:

_____
Secretary

Board of Supervisors
Resolution No. _____
Dated: _____
Attest:

_____
Clerk

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

_____

Macy Neshati
Vice President
Complete Coach Works
1863 Service Court
Riverside, CA 92507

City vendor number: 5503

Exhibits:

Exhibit A: FTA Requirements For Personal Services Contracts
Exhibit B: Project Delivery Schedule
Exhibit C: Schedule of Prices
Exhibit D: Payment Schedule
Exhibit E: Force Account Provisions

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

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Exhibits:

Exhibit A: FTA Requirements For Personal Services Contracts
Exhibit B: Project Delivery Schedule
Exhibit C: Schedule of Prices
Exhibit D: Payment Schedule
Exhibit E: Force Account Provisions

## EXHIBIT A

## FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

### I. DEFINITIONS

**A. Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

**B. Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

**C. Cooperative** Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

**D. Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.

**E. FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

**F. Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

**G. Government** means the United States of America and any executive department or agency thereof.

**H. Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

**I. Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

**J. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

**K. Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

**L. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

**M. U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## III. ACCESS TO RECORDS

**A.** The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

**B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**C.** The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

**A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

**B.** The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## VI. CIVIL RIGHTS

**A.** Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**B.** **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

**1.** **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit

laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**2. Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**VII. PATENT RIGHTS** *(applicable to contracts for experimental, research, or development projects financed by FTA)*

**A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

**B.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

**C.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**VIII. RIGHTS IN DATA AND COPYRIGHTS** (Applicable to contracts for planning, research, or development financed by FTA)

**A. Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

**B. Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.

**1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

**2. Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

**3. FTA Intention.** When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

**4. Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or

disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

7. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

C. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

D. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**IX. CONTRACT WORK HOURS AND SAFETY STANDARDS** *(applicable to non-construction contracts in excess of $100,000 that employ laborers or mechanics on a public work)*

A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld,

from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**D. Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

## X. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## XI. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of $100,000)*

**A.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

**B.** The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

## XII. CLEAN AIR *(applicable to all contracts and subcontracts in excess of $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.)*

**A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

**B.** The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

## XIII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system

of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## XIV. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

## XV. TERMINATION FOR CONVENIENCE OF CITY *(required for all contracts in excess of $10,000)*

See Agreement Terms and Conditions.

## XVI. TERMINATION FOR DEFAULT *(required for all contracts in excess of $10,000)*

See Agreement Terms and Conditions.

## XVII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

**A.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

**B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

**C.** The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## XVIII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## XIX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**XX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS** (applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)

**A.** The Contractor agrees to comply with applicable transit employee protective requirements as follows:

**1. General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

**2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

**B.** The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## XXI NATIONAL ITS ARCHITECTURE POLICY (Applicable to contracts for ITS projects)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

## XXII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at http://edocket.access.gpo.gov/2009/E9-24203.htm ) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

## XXIII. SEAT BELT USE

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

## EXHIBIT B: PROJECT DELIVERY SCHEDULE

Completion of items as indicated below shall occur before the time periods listed have elapsed. Liquidated Damages applies to all items. Refer to Section 19 of the Contract.

| **Item** | **Calendar Days after Notice-to-Proceed** |
|---|---|
| Start First Article | 60 |
| Presentation of First Article Coach | 180 |
| Acceptance of First Article Coach with Modifications | TBD (See note 1) |
| | Calendar Days after Acceptance of First Article coach |
| Delivery of Publications (Manuals, Parts Book, Drawings) | 60 |
| Delivery of the last standard Coach | 500 |

**Deliveries:**

**Note 1: Actual due date will be determined after the First Article coach has been presented and changes to the scope of work have been finalized and negotiated.**

**Note 2: All deliveries** to SFMTA shall be to the SFMTA Woods facility, weekday working hours, **Monday through Friday, 9 a.m. – 3 p.m.**, except SFMTA holidays, or as otherwise specified in writing by SFMTA. Contractor shall provide at least 48 hours notice to SFMTA prior to delivery.

Note 3: Due to service demands, SFMTA can only allow up to eight standard Coaches at the Contractor's site at any one time. Contractor shall not deliver more than 3 standard Coaches to the SFMTA at any one time.

Note 4: A completed coach shall be inspected and tested within a day of its delivery. The coach will have to pass inspection and acceptance testing by SFMTA before another coach will be released to the Contractor for rehabilitation.

## EXHIBIT C: SCHEDULE OF PRICES

| Line No. | Description | Parts & Labor | Sales Tax | Total | Quantity | Extended Price |
|---|---|---|---|---|---|---|
| 1 | Rehabilitation of NEOPLAN Standard (40') Coaches with Twin Vision/DRI's AVA | $215,700.60 | $8395.46 | $224,096.06 | 40 | $8,963,842.40 |
| 2 | Rehabilitation of NEOPLAN Standard (40') Coaches with Hanover Signs and AVA | $214,562.62 | $8395.46 | $222,958.08 | 40 | $8,918,323.20 |
| 3 | Wayside Equipment for Hanover Signs and AVA (Woods & Kirkland Divisions) | $11,364.17 | $495.83 | $11,364.17 | 2 | $23,720.00 |
| 4 | Unforeseeable Work (Technical Spec, § 1.5)* | Not to Exceed $ 500,000 | — | — | — | $500,000.00 |
| 5. | Exterior Body Work (Technical Spec. § 2.1.1) | Not to Exceed $700,000 | — | — | — | $700,000.00 |

| | |
|---|---|
| **GRAND TOTAL** | **$19,105,885.60** |

**EXHIBIT D: PAYMENT SCHEDULE**
**(See Note 1)**

**1. Rehabilitation of One First Article Coach (40ft) Neoplan Coaches (Ref Sect.11.5)**

| | | |
|---|---|---|
| 1a. | Completion of all vehicle rehabilitation on one First Article 40 ft. Coach as approved by SFMTA | 60% of the amount of Unit Price for Line Item No. 1 and 2, as per approved Price Schedule |
| 1b. | Successful completion of all vehicle acceptance testing on one First Article 40 ft. Coach at SFMTA | 35% of the amount of Line Items No. 1 and 2, as per approved Price Schedule |

**2. Rehabilitation of approximately (See note 1) (40ft) Neoplan Coaches**

| | | |
|---|---|---|
| 2a. | Completion of all vehicle rehabilitation on each 40 ft. coach as approved by SFMTA | 60% of the amount of Unit Price for Line Items No. 1 and 2, as per approved Price Schedule |
| 2b. | Successful completion of all vehicle acceptance testing on each 40 ft. coach at SFMTA | 35% of the amount of Unit Price for Line Items No. 1 and 2, as per approved Price Schedule |

**3. Final acceptance of all contract deliverables**

| | | |
|---|---|---|
| 3. | Final acceptance of all contract deliverables by SFMTA | 5% of the Grand Total amount as per approved Price Schedule. |

**Note 1: Invoices can only be processed and approved when a Progress Payment Application is submitted with all required forms correctly completed and attached with the invoice.**

## EXHIBIT E: FORCE ACCOUNT PROVISIONS

A. General: When Unforeseeable Work and Body Work are to be paid for on a Force Account basis, compensation will be determined as set forth herein.

1. The City will direct Contractor to proceed with the work on a Force Account basis, and the City will establish a "not to exceed" budget. To the extent feasible, the City and Contractor shall agree on the total number of hours to perform the Unforeseeable Work or Body Work.

2. All requirements regarding direct costs and markup for overhead and profit provided below shall apply to Force Account Work. However, the City will pay only the actual necessary costs substantiated by the Contractor and verified by the City.

3. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work.

B. Direct Costs:

1. Labor: Labor rates shall be paid at $85.00 an hour. This is a fully burdened rate (including fringe benefits, Federal Insurance Contributions Act payments, Federal and State Unemployment taxes, and net actual premium paid for public liability, worker's compensation, property damage, and other forms of insurance required by the City); and includes all costs for overhead and profit.

2. Materials: The City will pay Contractor only for those materials furnished by Contractor and directly required for performing the Unforeseeable Work or Body Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Unforeseeable Work or Body Work. If a trade discount by an actual supplier is available to Contractor, it shall be credited to the City. If the materials are obtained from a supplier or source owned wholly or in part by Contractor, payment for the materials shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

C. Contractor's Markup on Materials: The following limitations shall apply to Contractor's markup on all materials:

1. The total markup shall equal a maximum of 10 percent of Contractor's direct costs, as defined in B.2 above. No extra markup may be taken for the costs of subcontractors or suppliers.

2. Decreases in Work: For Unforeseeable Work or Body Work that results in a net decrease in direct costs for work performed by Contractor, the City shall receive a credit based on (a) the actual net decrease in labor costs and materials and (b) 10 percent of the direct cost credit amount attributable to materials.

3. When both additions and credits are involved, Contractor's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Unforeseeable Work or Body Work.

D. Records: Contractor shall maintain detailed records of all Unforeseeable Work or Body Work done on a Force Account basis and supply a summary to City of all Force Account Work performed on a weekly basis.

SFMTA | Municipal Transportation Agency

Edwin M. Lee | Mayor

Tom Nolan | Chairman
Cheryl Brinkman | Vice-Chairman
Leona Bridges | Director
Malcolm Heinicke | Director
Jerry Lee | Director
Joél Ramos | Director
Cristina Rubke | Director

Edward D. Reiskin | Director of Transportation

**September 5, 2012**

**SFMTA SIGNATURE ROUTING**

**Subject:**
**Contract No. CPT 631 Neoplan Rehabilitation**

**Executive Summary of Signature Request:**

Requesting review and signature on the brief and resolution for the Board of Supervisor's Calendar Item for Contract No. CPT 631: Neoplan Rehabilitation with Complete Coach Works.

On September 4, 2012, the SFMTA Board of Directors adopted Resolution No. , which authorized the Director of Transportation to execute Contract No. CPT 631 Neoplan Rehabilitation with Complete Coach Works.

| Routing | Routing Stops | Routing / Review Action | Initials & Date Confirming Action Complete |
|---|---|---|---|
| 6 | Ed Reiskin<br>Director of Transportation | ☐ Reviewed and signed<br>☐ Refer to comments | |
| 5 | Sonali Bose<br>Chief Financial Officer | ☐ Signature<br>☐ Refer to comments | |
| 4 | John Haley<br>Director of Transit | ☐ Reviewed<br>☐ Refer to comments | |
| 3 | Robin Reitzes<br>Deputy City Attorney | ☑ Reviewed/Signature on Agreement<br>☐ Refer to comments | 9/6/12 |
| 2 | Elson Hao<br>Senior Program Manager<br>Fleet Engineering | ☑ Reviewed and signed<br>☐ Refer to comments | 9/5/12 |
| 1 | TJ Lansang<br>Project Manager<br>Fleet Engineering | ☑ Reviewed/initiated processing | 9/5/12 |

Please contact TJ Lansang at 401-3137 or Elson Hao at 401-3196 for any questions. Please return signed original TJ Lansang.

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, Seventh Fl. San Francisco, CA 94103
Tel: 415.701.4500 | Fax: 415.701.4430 | www.sfmta.com

File No. 120909

**FORM SFEC-126:**
**NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

| **City Elective Officer Information** *(Please print clearly.)* | |
|---|---|
| Name of City elective officer(s):<br>Members, Board of Supervisors | City elective office(s) held:<br>Members, Board of Supervisors |

| **Contractor Information** *(Please print clearly.)* | |
|---|---|
| Name of contractor:<br>**Complete Coach Works** | |
| *Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor.* ***Use additional pages as necessary.***<br>1) Dale E. Carlson and Terri L. Carlson<br>2) Dale e Carson, CEO; Terri L. Carlson, CFO<br>3) Dale E. Carlson – 50%; Terri L. Carson -50%<br>4) I.D Industries, Inc.; Dillard and Associates; Worldwide Installations; East Bay Sign Co.; Ojo Technology; SharonTom Batteries; Kargo-Flex, Inc; Golden State Fasteners<br>5) None | |
| Contractor address:<br>1863 Service Court; Riverside CA 92507 | |
| Date that contract was approved:<br>*(By the SF Board of Supervisors)* | Amount of contracts: $<br>$19,105,885.60 |
| Describe the nature of the contract that was approved:<br>SFMTA: Contract No. CPT 631 – Meoplan Rehabilitation | |
| Comments: | |

This contract was approved by (check applicable):

☐the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

| **Filer Information** *(Please print clearly.)* | |
|---|---|
| Name of filer:<br>Angela Calvillo, Clerk of the Board | Contact telephone number:<br>( 415 ) 554-5184 |
| Address:<br>City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102 | E-mail:<br>Board.of.Supervisors@sfgov.org |

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed